

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAVID CHESTRA,  
Petitioner

v.

R.C. JOHNSON, WARDEN,  
Respondent.

Case No. 2:22-cv-03115-DOC (GJS)

ORDER: DISMISSING PETITION  
AS SECOND OR SUCCESSIVE;  
DENYING CERTIFICATE OF  
APPEALABILITY; AND  
REFERRING PETITION  
PURSUANT TO NINTH CIRCUIT  
RULE 22-3(a)

On May 29, 2019, Petitioner, a state prisoner, commenced a 28 U.S.C. § 2254 action in Case No. 2:19-cv-04675-RSWL (GJS) (the “Prior Petition”). The Prior Petition sought habeas relief with respect to Petitioner’s 2015 Los Angeles County Superior Court conviction for first degree murder and related sentence of 100 years to life (the “State Conviction”), and the Prior Petition raised five claims. On February 1, 2021, United States District Judge Ronald S.W. Lew denied the Prior Petition on its merits and dismissed the case with prejudice, and Judgment was entered. Petitioner did not appeal.<sup>1</sup>

On May 6, 2022, Petitioner filed the instant Petition, which again challenges

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<sup>1</sup> Pursuant to Rule 201 of the Federal Rules of Evidence, the Court has taken judicial notice of its records and files, as well as the Ninth Circuit dockets available electronically through the PACER system.

1 the State Conviction. The instant Petition alleges the very same five claims that  
2 were raised and resolved through the Prior Petition action.

### 3 4 DISCUSSION

5 State habeas petitioners generally may file only one federal habeas petition  
6 challenging a particular state conviction and/or sentence. *See, e.g.*, 28 U.S.C. §  
7 2244(b)(1) (courts must dismiss a claim presented in a second or successive petition  
8 when that claim was presented in a prior petition) and § 2244(b)(2) (with several  
9 exceptions not applicable here, courts must dismiss a claim presented in a second or  
10 successive petition when that claim was not presented in a prior petition). “A  
11 habeas petition is second or successive . . . if it raises claims that were or could have  
12 been adjudicated on the merits” in an earlier Section 2254 petition. *McNabb v.*  
13 *Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009).

14 Even when Section 2244(b)(2) provides a basis for pursuing a second or  
15 successive Section 2254 habeas petition, state habeas petitioners seeking relief in  
16 this District Court must first obtain authorization from the Ninth Circuit before  
17 filing any such second or successive petition. 28 U.S.C. § 2244(b)(3). The Ninth  
18 Circuit “may authorize the filing of the second or successive [petition] only if it  
19 presents a claim not previously raised that satisfies one of the two grounds  
20 articulated in § 2242(b)(2).” *Burton v. Stewart*, 549 U.S. 147, 152 (2007).

21 The Prior Petition raised five federal constitutional claims challenging the  
22 State Conviction and was denied on its merits over a year ago, and Petitioner failed  
23 to appeal that decision. The instant Petition once more challenges the State  
24 Conviction based solely on the very same claims that already have been resolved  
25 against him on their merits. The instant Petition, therefore, is second or successive  
26 within the meaning of Section 2244(b)(1).

27 The Court has reviewed the Ninth Circuit’s dockets and there is no indication  
28 that Petitioner has sought, much less obtained, authorization from the Ninth Circuit

1 to bring the instant Petition, and thus, the Court is without jurisdiction to entertain it.  
 2 28 U.S.C. § 2244(b)(3)(A); *see also* *Burton*, 549 U.S. at 157 (district court lacks  
 3 jurisdiction to consider the merits of a second or successive petition absent prior  
 4 authorization from the circuit court); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th  
 5 Cir. 2001) (per curiam) (“When the AEDPA is in play, the district court may not, in  
 6 the absence of proper authorization from the court of appeals, consider a second or  
 7 successive habeas application.”).


8 Accordingly, IT IS ORDERED that: the Petition is dismissed without  
 9 prejudice; and Judgment shall be entered dismissing this action without prejudice.

10 In addition, pursuant to Rule 11(a) of the Rules Governing Section 2254  
 11 Cases in the United States District Courts, the Court has considered whether a  
 12 certificate of appealability is warranted in this case. See 28 U.S.C. § 2253(c)(2);  
 13 *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). The Court concludes that a  
 14 certificate of appealability is unwarranted, and thus, a certificate of appealability is  
 15 DENIED.

16 IT IS FURTHER ORDERED that the Clerk of the Court shall refer the  
 17 Petition to the Ninth Circuit pursuant to Ninth Circuit Rule 22-3(a).

18  
 19 **IT IS SO ORDERED.**

20 DATED: May 18, 2022

21   
 22 DAVID O. CARTER  
 23 UNITED STATES DISTRICT JUDGE

24 PRESENTED BY:

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 26  
 27 GAIL J. STANDISH  
 28 UNITED STATES MAGISTRATE JUDGE